

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

- 05 - 718 -

United States District Court		District
Name (under which you were convicted): <u>William J. HAMMONS</u>		Docket or Case No.: <u>9809019760</u>
Place of Confinement: <u>DELAWARE Correctional Center</u>		Prisoner No.: <u>166139</u>
Petitioner (include the name under which you were convicted) <u>William J. HAMMONS</u>		Respondent (authorized person having custody of petitioner) <u>THOMAS CARROLL - WARDEN</u>
The Attorney General of the State of <u>MD. JANE BRADY</u>		

## PETITION

OCT - 5 2005

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

BD scanned

NO DP P

- (a) Name and location of court that entered the judgment of conviction you are challenging: SUPERIOR Court, New Castle County, 500 N. King St., Wilmington, DEL. 19801  
(b) Criminal docket or case number (if you know): 9809019760
- (a) Date of the judgment of conviction (if you know): JUNE 13, 2002  
(b) Date of sentencing: JUNE 13, 2002
- Length of sentence: 20 YRS. LEVEL 5; 2 YEARS L-4, 1 YR. L-3
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case:  
RAPE 2<sup>nd</sup>, 20 YEARS LEVEL 5 IN CARCERATION  
UNLAWFUL IMPRISONMENT, 2 YEARS LEVEL 4 HALF-WAY HOUSE/WORK RELEASE  
ASSAULT 3<sup>rd</sup>, 1 YEAR PROBATION LEVEL 3
- (a) What was your plea? (Check one)  
(1) Not guilty ☐ (3) Nolo contendere (no contest) ☐  
(2) Guilty ☒ pled mid-TRIAL (4) Insanity plea ☐  
(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? pled guilty TO ABOVE. ALL OTHER CHARGES, 8 IN ALL, WERE DROPPED. ALL CHARGES LISTED ON DOCKET.

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: DELAWARE STATE SUPREME COURT

(b) Docket or case number (if you know): CASE NO. 387, 2002

(c) Result: AFFIRMED

(d) Date of result (if you know): Decided May 16, 03 / Docketed June 10, 03

(e) Citation to the case (if you know): Hammons v. State, 825 A2d 239 (2003)

(f) Grounds raised:

Illegal Sentence

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: DELAWARE STATE SUPREME COURT

(2) Docket or case number (if you know): NO. 387, 2002

(3) Result: Requested Rehearing EN BANC, pro-se, Court Refused to Hear it.

(4) Date of result (if you know): Referred to Counsel, He never responded.

(5) Citation to the case (if you know): Hammons v. State, 825 A2d 238 (2003)

(6) Grounds raised: Double Jeopardy - Court issued Clarifying order on illegal sentence after defendant had already begun to serve sentence.

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know):

N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: SUPERIOR COURT

(2) Docket or case number (if you know): DOCKET # 102

(3) Date of filing (if you know): 7-9-02

(4) Nature of the proceeding: MOTION FOR MODIFICATION

(5) Grounds raised: NOT SURE AS I NO LONGER HAVE A COPY OF MOTION. MAY HAVE DEALT WITH ILLEGAL SENTENCING ISSUE.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: DENIED

(8) Date of result (if you know): DOCKET # 109 / 7-26-02 DECIDED

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: SUPERIOR

(2) Docket or case number (if you know): DOCKET # 110 / CASE NO. 02M-08-023

(3) Date of filing (if you know): 8-12-02

(4) Nature of the proceeding: STATE HABEAS CORPUS

(5) Grounds raised: CANNOT REMEMBER, NO LONGER HAVE THIS MOTION

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): Don't Know

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL - COERCION

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(SEE ATTACHED)

(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: CANNOT BE

RAISED FOR THE FIRST TIME ON DIRECT APPEAL /  
WOULD HAVE POSED A CONFLICT

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: SUPERIOR COURT CRIMINAL RULE 61 POST-CONVICTION

Name and location of the court where the motion or petition was filed: SUPERIOR COURT,  
500 N. KING ST., WILMINGTON, DE. 19801

Docket or case number (if you know): 9809019760  
 Date of the court's decision: August 16, 2004  
 Result (attach a copy of the court's opinion or order, if available): DENIED - opinion  
ATTACHED.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE STATE Supreme  
Court, DOVER, DE. 19901

Docket or case number (if you know): 458, 2004

Date of the court's decision: Sept. 28, 2005

Result (attach a copy of the court's opinion or order, if available): \* AFFIRMED, opinion  
ATTACHED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

N/A

GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL  
Illegal Sentence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(SEE ATTACHED)



(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: INEFFECTIVENESS CANNOT BE RAISED FOR THE FIRST TIME ON DIRECT APPEAL. ILLEGAL SENTENCE WAS RAISED, BUT NOT THIS ASPECT OF IT BECAUSE COUNSEL FAILED TO DO SO.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Superior Court Rule 61 motion, Post-Conviction

Name and location of the court where the motion or petition was filed: SUPERIOR COURT 500 N. KING ST., WILMINGTON, DE. 19801

Docket or case number (if you know): NO. 9809619760

Date of the court's decision: AUGUST 16, 2004

Result (attach a copy of the court's opinion or order, if available): DENIED - OPINION ATTACHED.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE STATE SUPREME COURT, DOVER, DE. 19901

Docket or case number (if you know): 458,2004Date of the court's decision: \* SEPT. 28, 2005Result (attach a copy of the court's opinion or order, if available): AffirmedOpinion ATTACHED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

N/AGROUND THREE: LEGAL AND FACTUAL INNOCENCE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

(SEE ATTACHED)

(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

COUNSEL REFUSED TO RAISE THIS ISSUE

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒(2) If you did not raise this issue in your direct appeal, explain why: COUNSELREFUSED TO RAISE THIS ISSUE, HE CONSIDERED IT A CONFLICT.



## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Superior Court Criminal Rule 61 postconviction

Name and location of the court where the motion or petition was filed: Superior Court, 500 N. King St., Wilm. DEL. 19801

Docket or case number (if you know): 9809019760

Date of the court's decision: August 18, 2004

Result (attach a copy of the court's opinion or order, if available): Denied  
Opinion Attached

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE STATE Supreme Court, Dover, DE. 19901

Docket or case number (if you know): 458, 2004

Date of the court's decision: \* Sept. 28, 2005

Result (attach a copy of the court's opinion or order, if available): Affirmed  
Opinion Attached

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

N/A

Supreme Court Ruling WAS CONTRARY TO CLEARLY  
 GROUND FOUR: ESTABLISHED FEDERAL LAW ENTITLING PETITIONER TO HABEAS  
 CORPUS RELIEF WHERE MERITS OF THE CLAIMS WERE MERITORIOUS AND  
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):  
 THE COURTS NEVER APPLIED THE "COLLATERAL DOCTRINE" TO AN  
 ACTUAL INNOCENCE CLAIM.

A) Supporting Facts: IT WAS PLAIN ERROR FOR THE SUPERIOR COURT  
 AND STATE SUPREME COURT NOT TO ADDRESS THE MERITS NOR APPLY  
 THE "COLLATERAL DOCTRINE" TO AN ACTUAL INNOCENCE CLAIM.  
 FED. RULES OF CRIM. PROCEDURE RULE 52(b), AS ADOPTED BY  
 DELAWARE SUPERIOR COURT CRIMINAL RULE 52(b). (SEE ATTACHED)

(b) If you did not exhaust your state remedies on Ground Four, explain why:

THIS CLAIM IS DEEMED EXHAUSTED BECAUSE IT WAS  
 RAISED IN STATES HIGHEST COURT

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a  
 state trial court? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ ?

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: \_\_\_\_\_

N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. \_\_\_\_\_

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Raymond Radulski - public DEFENDER,  
820 N. French St., Wilm., DE. 19801

(b) At arraignment and plea: ARRAIGNMENT - UNKNOWN public DEFENDER, AT  
PLEA, Andrew J. Withersell, 100 E. 14<sup>th</sup> St., Wilm., DE. 19801

(c) At trial: Andrew J. Withersell

(d) At sentencing: Andrew J. Withersell

(e) On appeal: Andrew J. Withersell

(f) In any post-conviction proceeding: PRE-SE

(g) On appeal from any ruling against you in a post-conviction proceeding: PRE-SE

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\* \_\_\_\_\_

(SEE EQUATABLE TOLLING ATTACHED.)

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: Allow Him TO  
Withdraw plea AND Remand For TRIAL

or any other relief to which petitioner may be entitled.

N/A  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on  
October 5, 2005 (month, date, year).

Executed (signed) on Oct. 5, 2005 (date).

William J. Hammond  
Signature of Petitioner

\*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.



If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN FORMA PAUPERIS DECLARATION

United States District Court

[Insert appropriate court]

\* \* \* \* \*

## Equitable Telling

ON 6-15-02 defendant entered a plea of Guilty mid-Trial. DK. It. #98. ON 7-11-02, defendant, pro-se, Filed a Timely Notice of Appeal. DK. It. #104. THEREAFTER, THE COURT instructed Counsel THAT HE still represented defendant TO WHICH HE responded By Filing A Formal Notice of Appeal ON 7-23-02. DK. It. #108.

Defendants direct appeal WAS decided ON May 16, 2003 But Not docketed untill 6-10-03. DK. It. #148.

ON 4-29-04, Defendant, pro-se, Filed His post-Conviction Relief motion. DK. It. #175. The post-Conviction motion WAS decided ON 8-16-04. DK. It. #182. THEREAFTER defendant Filed A Timely Appeal ON 10-18-04. DK. It. #183.

THIS appeal WAS decided ON 9-28-05. DK. It. #184, UNDER THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 ("A.E.D.P.A."), AS CONTAINED IN 28 USC. 2254(d), defendant argues THAT His petition FOR writ OF Habeas Corpus in United States District Court is Being Timely Filed.

IN THE event THIS is Contested, defendant argues THAT His Grounds OF Factual innocence AS CONTAINED HEREIN, would permit Him TO File AN untimely 2254 petition IF IT appears THAT HE is ABLE TO MUSTER A plausible Factual CASE meeting THE EXACTING gateway

STANDARD ESTABLISHED BY THE SUPREME COURT IN SCHLUP V. DELO, 513 U.S. 298 (1995), FOR OVERRIDING A PETITIONER'S CLEAR FAILURE TO MEET DEADLINES AND REQUIREMENTS FOR FILING A TIMELY PETITION IN FEDERAL COURT.

MAJOY V. ROE, CASE NO. # CO-56521 (9<sup>TH</sup> CIR., July 11, 2002)  
(Citations omitted).

UNDER SCHLUP, "A PETITIONER'S OTHERWISE BARRED CONSTITUTIONAL CLAIMS (MAYBE) CONSIDERED ON THE MERITS ..... IF HIS CLAIM OF ACTUAL INNOCENCE IS SUFFICIENT TO BRING HIM WITHIN THE NARROW CLASS OF CASES ..... IMPLICATING A FUNDAMENTAL "MISCARRIAGE OF JUSTICE." CARRIGER V. STEWART, 132 F3d 463, 477 (9<sup>TH</sup> CIR. 1997) (EN BANC), (quoting SCHLUP 513 U.S. AT 315).

DEFENDANT ARGUES THAT HIS CLAIM OF FACTUAL INNOCENCE MEETS ALL THE ABOVE.

Jurisdiction

28 USC 2254. State Custody, Remedies in Federal Courts.

(a) THE SUPREME, A JUSTICE THEREOF, A CIRCUIT JUDGE, OR A DISTRICT SHALL ENTERTAIN AN APPLICATION FOR A WRIT OF HABEAS CORPUS IN BEHALF OF A PERSON IN STATE CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT ONLY ON THE GROUND THAT HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES.

(B)(1) AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT SHALL NOT BE GRANTED UNLESS IT APPEARS THAT —

(A) THE APPLICANT HAS EXHAUSTED THE REMEDIES AVAILABLE IN THE COURTS OF THE STATE; OR

(B)(ii) CIRCUMSTANCES EXIST THAT RENDER SUCH PROCESS INEFFECTIVE TO PROTECT THE RIGHTS OF THE APPLICANT.

(d) AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT SHALL NOT BE GRANTED WITH RESPECT TO ANY CLAIM THAT WAS ADJUDICATED ON THE MERITS IN THE STATE COURT PROCEEDINGS UNLESS THE ADJUDICATION OF THE CLAIM —

(1) RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE

United States; or

(2) Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

(c)(1) In a proceeding instituted by an application for a writ of Habeas Corpus by a person in custody pursuant to the judgment of a state court, a determination of a factual issue made by a state court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in the state court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that -

(B) The facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(F) IF THE APPLICANT CHALLENGES THE SUFFICIENCY OF THE EVIDENCE ADDUCED IN THE STATE COURT PROCEEDING TO SUPPORT THE STATE COURTS DETERMINATION OF A FACTUAL ISSUE MADE THEREIN, THE APPLICANT, IF ABLE, SHALL PRODUCE THAT PART OF THE RECORD PERTINENT TO A DETERMINATION OF THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT SUCH DETERMINATION. IF THE APPLICANT, BECAUSE OF INDIGENCY OR OTHER REASON IS UNABLE TO PRODUCE SUCH PART OF THE RECORD, THEN THE STATE SHALL PRODUCE SUCH PART OF THE RECORD AND THE FEDERAL COURT SHALL DIRECT THE STATE TO DO SO BY ORDER DIRECTED TO AN APPROPRIATE STATE OFFICIAL. IF THE STATE CANNOT PROVIDE SUCH PERTINENT PART OF THE RECORD, THEN THE COURT SHALL DETERMINE UNDER THE EXISTING FACTS AND CIRCUMSTANCES WHAT WEIGHT SHALL BE GIVEN TO THE STATE COURTS FACTUAL DETERMINATION.

AS TO **GROWD ONE**, THE COURT SHOULD REVIEW THIS GROWD UNDER 28 USC 2254 (A) BECAUSE DEFENDANT HAS EXHAUSTED ALL REMEDIES AVAILABLE IN STATE COURT, AND UNDER 28 USC 2254 (B) (ii), BECAUSE CIRCUMSTANCES EXIST THAT RENDER SUCH PROCESS INEFFECTIVE TO PROTECT THE RIGHTS OF THE APPLICANT.



AS TO **Ground Two**, THE COURT SHOULD REVIEW THIS GROUND UNDER 28 USC 2254 (A) BECAUSE DEFENDANT HAS EXHAUSTED ALL REMEDIES AVAILABLE IN STATE COURT, AND 28 USC 2254 (B)(ii), BECAUSE CIRCUMSTANCES EXIST THAT RENDER SUCH PROCESS INEFFECTIVE TO PROTECT THE RIGHTS OF THE APPLICANT.

AS TO **Ground Three**, THE COURT SHOULD REVIEW THIS GROUND UNDER 28 USC 2254 (d)(2) BECAUSE THE ADJUDICATION OF THIS CLAIM RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING; AND 28 USC 2254 (e)(2)(B), BECAUSE THE FACTS UNDERLYING THE CLAIM WOULD BE SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT BUT FOR CONSTITUTIONAL ERROR, NO REASONABLE FACTFINDER WOULD HAVE FOUND THE APPLICANT GUILTY OF THE UNDERLYING OFFENSE; AND FINALLY THE COURT SHOULD REVIEW THIS GROUND UNDER 28 USC 2254 (F) BECAUSE THE DEFENDANT DOES CHALLENGE THE SUFFICIENCY OF THE EVIDENCE ADDUCED IN SUCH STATE COURT PROCEEDING TO SUPPORT THE STATE COURT'S DETERMINATION OF A FACTUAL ISSUE MADE THEREIN .....

AS TO **Grand Four**, THE COURT SHOULD REVIEW THIS Grand under 28 U.S.C. 2254 (B)(ii) BECAUSE CIRCUMSTANCES EXIST THAT RENDER SUCH PROCESS INEFFECTIVE TO PROTECT THE RIGHTS OF THE APPLICANT, 28 USC 2254 (D)(1) RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES, 28 USC 2254 (D)(2) BECAUSE THE COURT'S RULING RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING; AND 28 USC 2254 (B) BECAUSE THE FACTS UNDERLYING THE CLAIM WOULD BE SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT BUT FOR CONSTITUTIONAL ERROR, NO REASONABLE FACTFINDER WOULD HAVE FOUND THE APPLICANT GUILTY OF THE UNDERLYING OFFENSE.

**Ground ONE: INEFFECTIVE ASSISTANCE OF COUNSEL - COERCION****Supporting Facts:**

- (A) 1) Counsel continually told defendant that he had no chance of winning a trial and if he did not plead guilty to Raping Kristen Balklar, he would be found guilty and being found guilty, he would be sentenced to life in prison. Additionally he advised defendant prior to and during trial that the state had a lot of damning evidence against him, knowing full well this was a lie. A93.
- 2) Counsel deliberately misrepresented the facts of this case during his opening at trial when he stated that he believed the alleged rape victim was raped at knife point or by a sharp object A171, knowing full well that the alleged victim never alleged that nor did any of the police reports identify a weapon. A184.
- 3) Counsel's comments in regards to a knife in his opening amounts to "other crimes evidence" and prejudiced defendant because, at the time of his arrest, two days after the alleged rape, he had a pocket knife on him which was confiscated by police and introduced into evidence at trial. A218 Here, the "other crimes evidence" would have been possession of a deadly weapon during the commission of a felony. Carrying a concealed deadly weapon.

- 4) Counsel Refused to object to any of the knives admitted into evidence or the testimony there to in spite of the fact that no factual evidence existed that would show that a knife was involved in any of the crimes defendant was charged with, or more specifically, that the knife in defendant possession upon his arrest was connected to any of the crimes.
- 5) At trial, the state offered into evidence two knives differing in shape and size even though defendant only owned one knife. The state alleged both knives were one and the same but they differed in shape and size. Counsel would not object or point this out to the jury even after defendant asked him to. (~~Q234~~) (A234).
- 6) Counsel issued no subpoenas to any defense witness although he was asked to do so and, mid-trial, eliminated the state's DNA expert witness who excluded defendant as a contributor to the sole pubic hair found in alleged rape victims underwear. These witnesses would have bolstered his defense and he had a constitutional right to subpoena them. *Washington v. Texas*, 377 Sct. 1920. A226. A227. Defendant was never advised of his right to subpoena witnesses by the court or counsel.
- 7) Counsel would not obtain all discoverable evidence relevant to the defense's position nor share this

Information with defendant. A97.

8). Counsel Refused TO investigate AN Alleged RAPE THAT Happened ON September 18, 1998, Just Four days PRIOR TO THE BAKALAR RAPE. THIS INCIDENT Happened IN THE EXACT SAME AREA WITH THE EXACT SAME MODIS OPERANDI ONLY THE PHYSICAL DESCRIPTION WAS DIFFERENT FROM THAT OF DEFENDANT. THIS ALLEGED VICTIM IDENTIFIED HER ATTACKER AS BEING BETWEEN 19-25 years old WITH BLONDE HAIR. A154. DEFENDANT WAS 36 years old AT THE TIME OF THE CRIME WITH DARK BROWN ALMOST BLACK HAIR, AND WAS NEVER IDENTIFIED BY THIS EYE WITNESS. COUNSEL NEVER INTERVIEWED THIS WITNESS, NOR DID HE EVER OBTAIN THE WRITTEN REPORT TAKEN BY DUREC OFFICER JOHN T. WALES WHO INTERVIEWED THIS WITNESS. A97.

9). Counsel MADE NO EFFORT TO FORCE THE STATE TO TURN OVER THE AFOREMENTIONED DISCOVERY MATERIAL CONTAINED IN HIS May 21<sup>st</sup>, 2003 LETTER. A97.

THE STATE REFUSED TO DISCLOSE THIS EVIDENCE IN VIOLATION OF BRADY V. MARYLAND, 83 Sct. 1194 (1963). STRICKLAND V. WASHINGTON, 104 Sct. 2052.

DEFENDANT ARGUES THAT COUNSEL ACTIONS DENIED HIM THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 6<sup>th</sup> AMENDMENT TO THE UNITED STATES CONSTITUTION AND UNDERMINED HIS CONFIDENCE IN HIS DEFENSE. STRICKLAND V. WASHINGTON, 104 Sct. 2052.

FURTHERMORE, DEFENDANT WAS DEPRIVED OF THE INFORMATION THAT WAS RELEVANT AND MATERIAL TO HIS ABILITY TO PRESENT A MEANINGFUL DEFENSE DENYING HIM HIS RIGHTS TO DUE PROCESS UNDER THE 14<sup>th</sup> AMENDMENT TO THE UNITED STATES CONSTITUTION. U.S. V. CRONIC, 104 Sct. 2039.

DEFENDANT WAS DENIED HIS RIGHT TO BE PROTECTED FROM SELF INCRIMINATION AND HIS RIGHT TO BE FREE FROM COERCION. AS OUTLINED IN THE 5<sup>th</sup> AND 8<sup>th</sup> AMENDMENTS TO THE UNITED STATES CONSTITUTION. ARIZONA V. FULMINANTE, 111 Sct. 1246.

DEFENDANT FURTHER ARGUES THAT A GUILTY PLEA IS OPEN TO ATTACK ON THE GROUND THAT COUNSEL DID NOT PROVIDE THE DEFENDANT WITH REASONABLY COMPETENT ADVICE. U.S. V. STUBBS, 6<sup>th</sup> CIR. (2002), 279 F3D 402.



## Ground Two: INEFFECTIVE ASSISTANCE OF COUNSEL - ILLEGAL SENTENCE

### Supporting Facts:

- (A) 1) WHEN SENTENCED, THE COURT ORDERED DEFENDANT TO COMPLETE THE UNEXPIRED PORTION OF A PREVIOUS SENTENCE BEFORE HE COULD BEGIN TO SERVE HIS NEW TRUTH AND SENTENCING SENTENCE IN VIOLATION OF 11 DEL. C. § 4216(A) A25, A28, A256.
- 2) COUNSEL KNEW DEFENDANT'S SENTENCE TO BE ENTIRELY ILLEGAL BUT FAILED TO RAISE THIS ASPECT OF THE ILLEGAL SENTENCE ON DIRECT APPEAL. (CASE NO 387, 2002)

DEFENDANT ARGUES HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS DENIED HIM UNDER THE 6<sup>TH</sup> AMENDMENT TO THE UNITED STATES CONSTITUTION, *STRICKLAND V. WASHINGTON*, 104 Sct. 2052, AND HIS RIGHTS TO DUE PROCESS WERE VIOLATED AS OUTLINED IN THE 14<sup>TH</sup> AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE DEFENDANT HAS A RIGHT TO A LEGAL SENTENCE AND TO KNOW HOW HIS SENTENCE WILL BE STRUCTURED. WITHOUT THIS INFORMATION HIS PLEA CANNOT BE ENTERED INTO KNOWINGLY AND VOLUNTARILY. *BROWN V. STATE*, DEL. SUPR. 250 A2J 503 (1969), *MCCARTHY V. UNITED STATES*, 394 U.S. 459 (1969), *HILL V. LOCKWELL*, 106 Sct. 366.

Ground Three: Legal and Factual Innocence  
Insufficient Evidence to Sustain a Conviction

Supporting Facts:

- (A) 1). Alleged Rape Victim, KRISTEN BAKALAR, NEVER IDENTIFIED DEFENDANT AS HER ATTACKER. ~~Q104~~. A174.
- 2). Alleged Rape Victim BAKALAR TESTIFIED TO BEING SHAVED IN HER PUBIC REGION. A179 - A180.
- 3). Alleged Rape Victim BAKALAR WAS A VIRGIN AT THE TIME OF THE INCIDENT. A176.
- 4). DNA Samples Collected From Both Defendant and MS. BAKALAR, EXCLUDED DEFENDANT AS BEING A CONTRIBUTOR TO ALL SAMPLES COLLECTED AND ANALYZED AT THAT TIME. A103 - A111.
- 5). NUCLEAR DNA ANALYSIS WAS CONDUCTED ON THE ONLY PIECE OF TANGIBLE FORENSIC EVIDENCE FOUND ON THE VICTIM. THIS WAS A SINGLE PUBIC HAIR FOUND IN THE VICTIM'S UNDERWEAR. ALTHOUGH THE TEST PROVED INCONCLUSIVE, IT DID DETECT THE PRESENCE OF THE "Y" CHROMOSOME WHICH IS FOUND ONLY IN THE GENETIC MATERIAL OF A MALE AND ALWAYS ABSENT IN THE GENETIC MAKEUP OF A WOMAN. A113; A141 - A142.

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6). BECAUSE NUCLEAR DNA PROVED INCONCLUSIVE AS TO IDENTITY OF THE ALLEGED RAPIST, A MORE ADVANCED TEST WAS CONDUCTED; THAT OF MITOCHONDRIAL DNA ANALYSIS. MITOCHONDRIAL DNA EXCLUDED DEFENDANT AS THE SOURCE OF THE PUBIC HAIR IN QUESTION, A115, EVERY HUMAN BEING WITHIN DEFENDANT'S MATERIAL LINEAGE, ALSO, AND THE ALLEGED VICTIM, KRISTEN BAKALAR, HERSELF. A141.

7). ALL DNA TESTS WERE PERFORMED BY THE STATE. MITOCHONDRIAL DNA TESTS WERE RULED RELEVANT AND RELIABLE BY THE SUPERIOR COURT. A118-140.

8). POLICE ALLEGED MS. BAKALAR WAS RAPED BETWEEN 2130 AND 2140 ON SEPTEMBER 22, 1998. A152. DEFENDANT TOLD POLICE HE WAS HOME DURING THAT TIME FRAMIZ TALKING TO A CO-WORKER, TERESA MAATHS, AND HER CALLER I.D. WOULD PROVE THIS. POLICE CONTACTED MS. MAATHS AND SHE CONFIRMED DEFENDANT'S ALIBI. A157. POLICE ALSO ATTEMPTED TO PRINT OUT, AND/OR MEMORALIZE THE CALLER I.D., AND ALTHOUGH THEY CLAIM THEY COULD NOT, THEY DID CONFIRM DEFENDANT'S ALIBI BECAUSE THEY SAW THE CALLER I.D. A102.

FURTHERMORE, DEFENDANT LIVED APPROXIMATELY 2 1/2 MILES FROM THE CRIME SCENE AND DID NOT OWN A CAR. A169.

DEFENDANT HAS SHOWN THAT HE HAS A COLORABLE CLAIM OF ACTUAL INNOCENCE. *Mayfield v. U.S.* 659 A2d 1249 (1995), AND BECAUSE OF THIS, HE MUST BE ALLOWED TO RAISE THIS CLAIM FOR THE FIRST TIME ON POST-CONVICTION.

*Smith v. Murray*, 477 U.S. 527, Additionally, HE NEED NOT MEET THE CAUSE AND PREJUDICE REQUIREMENT BECAUSE HE IS ASSERTING HIS ACTUAL INNOCENCE.

*Sawyer v. Whitley*, 112 Sct. 2514, 2518-20.

THE STANDARD AND SCOPE OF REVIEW FOR GRANTING HABEAS CORPUS CLAIM BASED ON INSUFFICIENCY OF EVIDENCE TO SUPPORT CONVICTION IS WHETHER, AFTER VIEWING EVIDENCE IN A LIGHT MOST FAVORABLE TO THE PROSECUTION, ANY RATIONAL TRIER OF FACT COULD HAVE FOUND BEYOND REASONABLE DOUBT ESSENTIAL ELEMENTS NECESSARY TO SUPPORT CONVICTION. *HOLLINES V. ESTELLE, (TEXAS)*, 569 F. Supp. 146 (1983).

DEFENDANT IS NOT REQUIRED TO SHOW THAT HE IS ACTUALLY INNOCENT OF THE CRIME HE WAS CONVICTED OF COMMITTING, INSTEAD HE MUST SHOW THAT A COURT CANNOT HAVE CONFIDENCE IN THE OUTCOME OF TRIAL. *CARRIGER V. STEWART*, 132 F3d at 478 (9th Cir. 1997) (EN BANC), (quoting *SCHLUP V. DELO*, 513 U.S. 298 at 316 (1995)). DEFENDANT MUST PROVE ONLY THAT A CONSTITUTIONAL VIOLATION "PROBABLY RESULTED" IN THE CONVICTION OF AN INNOCENT PERSON. *SCHLUP V. DELO*, 513 U.S. 298. GIVEN THE FACTS PRESENTED WITHIN THIS PETITION,

DEFENDANT ARGUES THAT THE FOLLOWING CONSTITUTIONAL VIOLATIONS PROBABLY RESULTED IN THE CONVICTION OF AN INNOCENT PERSON. U.S.C.A. 5, 6, 8, 14.

ADDITIONALLY, STATE SUPERIOR COURT AND STATE SUPREME COURT HAD A DUTY TO DECIDE COLLATERAL CLAIMS ON THE MERITS IF A DEFENDANT ESTABLISHES THAT HE HAS A COLORABLE CLAIM OF ACTUAL INNOCENCE.

MAYFIELD V. UNITED STATES, 659 A2d 1249 (1995). SMITH V. MURRAY, 477 U.S. 527, 537, 106 Sct. 2661 (1986).

**Ground Four:** Supreme Court Ruling WAS Contrary TO Clearly Established Federal Law Entitling petitioner TO Habeas Corpus RELIEF WHERE THE MERITS OF THE CLAIM WERE MERITORIOUS AND THE COURTS NEVER APPLIED THE COLLATERAL DOCTRINE TO AN ACTUAL INNOCENCE CLAIM.

**Supporting Facts:** UNDER THE EXCEPTION TO THE CHANCE AND PREJUDICE REQUIREMENT, THE TRIAL COURT MUST DECIDE COLLATERAL CLAIMS BASED ON THE MERITS IF THE DEFENDANT ESTABLISHES THAT HE HAS A COLORABLE CLAIM OF ACTUAL INNOCENCE. WAYFIELD V. UNITED STATES, 659 A.2d 1249; SMITH V. MURRAY, 477 U.S. 527, 537, 106 Sct. 2661, 2667-68 (1986); SAWYER V. WHITLEY, 112 Sct. 2514, 2518-20 (1992); MURRAY V. CARRIER, 106 Sct. 2639, 477 U.S. at 496.

NEITHER THE SUPERIOR COURT NOR THE STATE SUPREME EXERCISED ITS DUTY TO DECIDE DEFENDANT'S CLAIM OF ACTUAL INNOCENCE BASED ON THE MERITS; IN FACT THE MERITS OF THIS CLAIM WENT TOTALLY IGNORED. SEE THE MERITS OF DEFENDANT'S CLAIM IN GROUND THREE OF THIS HABEAS CORPUS AND THE SUPREME COURT'S DECISION AT A-262-263.



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